

DOCKET NO. 458-07-2240

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
V.	§	OF
	§	
ARCHIE NOEL PATTERSON, JR.	§	
D/B/A PRIVE	§	
HARRIS COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this disciplinary action against Archie Noel Patterson, Jr. d/b/a Prive (Respondent), alleging that Respondent issued a check or draft for the purchase of beer which was dishonored when presented for payment, in violation of the Texas Alcoholic Beverage Code. Petitioner requested that Respondent's permit be suspended six days, or in lieu of suspension, that Respondent pay a civil penalty of \$900. The Administrative Law Judge (ALJ) agrees with this recommendation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, and 61.71(a)(1). The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On April 5, 2007, Petitioner issued its notice of hearing, directed to Archie Noel Patterson, Jr. d/b/a Prive, 910 Westheimer, Houston, Texas 77006, via certified mail, return receipt requested as evidenced by the certified mail receipt. On May 4, 2007, a hearing convened before SOAH ALJ Timothy Horan at 2020 North Loop West, Suite # 111, Houston, Texas. Petitioner was represented at the hearing by Lindy Hendricks, TABC Staff Attorney. Respondent did not appear and was not

represented at the hearing. After presentation of evidence regarding notice and jurisdiction, the record was closed.

II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below. As admitted, the allegations support the conclusion that Respondent violated the TEX. ALCO. BEV. CODE as mentioned in the notice and that the penalty is appropriate.

III. FINDINGS OF FACT

1. Respondent, Archie Noel Patterson d/b/a Prive holds a Mixed Beverage Permit MB-447605, which includes the Mixed Beverage Late Hours Permit, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 910 Westheimer, Houston, Harris County, Texas.
2. On April 5, 2007, Petitioner issued its notice of hearing to Respondent, for a hearing that was held on May 4, 2007. The notice of hearing was sent via certified mail to Respondent's last known address as evidenced by the certified mail receipt.
3. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
4. The notice of hearing also contained the following language in 12-point or larger boldface type: If a party fails to appear at the hearing, the factual allegations in the notice of hearing

will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.

5. A hearing convened before Timothy Horan, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH), on May 4, 2007. Respondent did not appear and was not represented at the hearing and the record was closed.
6. On or about November 2, 2006, Respondent issued a check or draft for the purchase of beer which was dishonored when presented for payment.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 11.61(b)(2), 24.06, and 61.71(a).
2. SOAH has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Petitioner issued its notice of hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. The hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), and 61.73(b).
6. Based upon Conclusion of Law No. 5 and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 24.06, and 61.71(a), Respondent's permit should be suspended for a period of six days.
7. Based upon Conclusion of Law No. 6 and TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of \$900 in lieu of suspension of the permit/license.

SIGNED June 26, 2007.

**TIMOTHY HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**